

NOTICE PUBLICATION OF REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2009-1124-01EE
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For use by Office of Administrative Law (OAL) only

2009 NOV 24 AM 9:30 OFFICE OF ADMINISTRATIVE LAW	
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY Department of Real Estate	AGENCY FILE NUMBER (If any) DRE - FPA Readopt
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) California Foreclosure Prevention Act	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2009-0522-01E
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 2850.1, 2850.2, 2850.3, 2850.4, 2850.5, 2850.6, 2850.7, 2850.8, 2850.9, 2850.10
	AMEND
TITLE(S) Title 10, Chapter 6	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) Finding, Proposed Text, Statement mailed and web posting of same (per GC 11340.85(c)) on November 18, 2009
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5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	Effective 30th day after filing with Secretary of State	Effective on filing with Secretary of State	\$100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) November 24, 2009
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Daniel E. Kehew	TELEPHONE NUMBER (916) 227-0425	FAX NUMBER (Optional) (916) 227-9458	E-MAIL ADDRESS (Optional) DRERegulations@dre.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Barbara J. Bigby</i>	DATE 11-18-09
TYPED NAME AND TITLE OF SIGNATORY BARBARA J. BIGBY, CHIEF DEPUTY COMMISSIONER	

For use by Office of Administrative Law (OAL) only

THE REAL ESTATE COMMISSIONER
HEREBY READOPTS THE FOLLOWING REGULATIONS
TO CHAPTER 6, TITLE 10, CALIFORNIA CODE OF REGULATIONS
EFFECTIVE: NOVEMBER 24, 2009

1. ARTICLE 16.5 is added to Chapter 6, Title 10 of the California Code of Regulations to read:

ARTICLE 16.5. CALIFORNIA FORECLOSURE PREVENTION ACT

SUBARTICLE 1. REQUIREMENTS

2. Section 2850.1 is adopted to read:

§ 2850.1. Scope of Regulations.

(a) This article sets forth the minimum requirements for a comprehensive loan modification program under Civil Code Section 2923.53, in order for a mortgage loan servicer to obtain an order of exemption from Civil Code Section 2923.52.

(b) The modification of loans in conformance with the Home Affordable Modification Program Guidelines issued by the U.S. Department of the Treasury on March 4, 2009, as amended (the "Guidelines"), shall constitute the implementation of a comprehensive loan modification program that meets the requirements of subdivision (a) of Civil Code Section 2923.53, and shall be deemed to meet all of the requirements in this article (including Sections 2850.2, 2850.3, 2850.4, 2850.5, and 2850.6 of these rules). All other comprehensive loan modification programs shall comply with the minimum standards in this subarticle to obtain an order from the Commissioner for exemption from Civil Code Section 2923.52.

(c) For purposes of this article, "residential mortgage loan" shall mean any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed a dwelling (as so defined).

(d) For purposes of this article, "borrower" shall mean a person who was the original obligor on the note or other secured obligation primarily for personal, family or household use and who is the trustor or mortgagor under the security device. "Borrower" includes a person who has formally assumed the secured obligations with the written consent of the beneficiary or mortgagee.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

3. Section 2850.2 is adopted to read:

§ 2850.2. Eligibility.

(a) For an applicant to obtain an order of exemption from Civil Code Section 2923.52, the comprehensive loan modification program shall, at a minimum, be available for borrowers and residential mortgage loans meeting the following requirements:

1) The residential mortgage loan to be modified was recorded during the period of January 1, 2003 to January 1, 2008.

2) The borrower occupies the property as his or her principal residence, and occupied the property as his or her principal residence at the time the loan became delinquent.

3) The loan is in default, and a notice of default has been filed with the county recorder under Civil Code Section 2924 for the mortgaged property.

4) The residential mortgage loan is the first lien on the property, and either the property is not subject to a subordinate lien, the subordinate lien holder has agreed to subordinate to the modified first lien, or an agreement from the subordinate lien holder is not necessary for the first lien to remain in first position upon the modification of the loan.

5) The mortgaged property is located in California.

6) The borrower can document assets, income or likelihood of future earnings to establish the ability to repay the modified loan, using customary underwriting criteria and analysis or current industry standards.

7) The borrower has not surrendered the property.

8) The borrower has not contracted with an organization, person or entity whose primary business is advising people who have decided to leave their homes regarding how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.

9) The borrower does not currently have a bankruptcy action pending under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code.

(b) Nothing in this section prohibits a mortgage loan servicer from including more residential mortgage loans and more borrowers in a comprehensive loan modification program than the minimum set forth in this section, including the borrowers described in paragraphs 8 and 9 of subsection (a) of this rule. For example, the Commissioner will consider a program that includes borrowers whose loans have not yet become delinquent, but such delinquency is reasonably imminent. For purposes of this subchapter, "delinquent" means that the borrower has defaulted on an obligation in the note, deed of trust, mortgage or related loan documents for 30 or more days. "Delinquent" does not include defaults based upon failure to pay at maturity except where maturity has been accelerated and is subject to reinstatement pursuant to Civil Code Section 2924c.

(c) A mortgage loan servicer that has obtained an order from the Commissioner exempting it from Civil Code Section 2923.52(a) is not required to provide a borrower identified in subsection (a) of this rule with an additional 90 days in the foreclosure process.

(d) A comprehensive loan modification program may, but need not, provide for the modification of a loan for a borrower or residential mortgage loan that does not meet the eligibility requirements in subsection (a) of this rule.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

4. Section 2850.3 is adopted to read:

§ 2850.3. Availability.

(a) For an applicant to obtain an order of exemption from Civil Code Section 2923.52, the comprehensive loan modification program shall, at a minimum, be made available to any borrower meeting the eligibility requirements of Section 2850.2 of these rules who calls, writes, or otherwise communicates with the mortgage loan servicer to notify the servicer of a financial hardship or to explore modifications to an existing loan, and shall be made available to borrowers as part of the contact required under Civil Code Section 2923.5.

(b) Every servicer that contacts a borrower in writing under Civil Code Section 2923.5 shall notify the borrower of the availability of the servicer's comprehensive loan modification program.

(c) A servicer is not required to comply with this section if the loan is investor-owned and the pooling and servicing agreement or other contract prohibits the servicer from modifying the loan terms in the manner set forth in this subchapter.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

5. Section 2850.4 is adopted to read:

§ 2850.4. Program Requirements.

For an applicant to obtain an order of exemption from Civil Code Section 2923.52, the comprehensive loan modification program shall meet the minimum requirements in Sections 2850.5 and 2850.6 of these rules.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

6. Section 2850.5 is adopted to read:

§ 2850.5. Loan Modification Features.

(a) Any residential mortgage loan refinanced under the HOPE for Homeowners Program of the HOPE for Homeowners Act of 2008 (Title IV of Division A of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat. 2654, approved July 30, 2008) as amended, and the rules adopted thereunder) is conclusively presumed to meet the minimum requirements for a loan modification under a comprehensive loan modification program.

(b) Any residential mortgage loan refinanced under the Home Affordable Refinance Program announced by the U.S. Department of the Treasury on February 18, 2009, is conclusively presumed to meet the minimum requirements for a loan modification under a comprehensive loan modification program.

(c) Anticipated Recovery (NPV) Test

(1) For purposes of determining the anticipated recovery from foreclosure and the anticipated recovery from a loan modification, the net present value of the anticipated recovery shall be based on reasonable assumptions regarding discount rates, property values, costs of foreclosure, costs of modification, and ability of borrowers to pay. A servicer shall have internal or external evidence to support the validity of the assumptions in the calculations. The use of the Net Present Value Model Parameters in the Home Affordable Modification Program Guidelines, including applicable discount rates, cure rates and redefault rates, issued by the Department of the Treasury on March 4, 2009, and any amendments thereto, shall meet the requirements of this section and shall not require additional evidence or support. If a servicer's anticipated recovery (NPV) model differs from the Treasury's Net Present Value Model Parameters, a servicer shall explain the differences in the application and set forth a justification for the differences.

(2) Where the net present value of the anticipated recovery from a loan modification meeting

the parameters of this section exceeds the net present value of the anticipated recovery from foreclosure, the servicer shall provide a loan modification to eligible borrowers unless:

(A) A borrower is unable to document his or her ability to repay the loan; or

(B) After reducing the interest rate, extending the amortization period, forbearing principal, or modifying the loan in another manner reasonably designed to facilitate repayment of the loan, the servicer is unable to achieve a loan modification for the borrower that results in a borrower's ability to repay the loan, under customary underwriting criteria and analysis or current industry standards.

(d) Debt to Income Ratio of 38% or Less

(1) For purposes of applying the anticipated recovery test, a servicer shall target a 38% housing-related debt to gross income ratio. However, a servicer is not required to meet this ratio for every loan modified under the program. A servicer's loan modifications shall, on an aggregate basis, target a 38% housing-related debt to gross income ratio. A servicer may use any reasonable statistical analysis of loan modifications to establish that its loan modification program targets a 38% housing-related debt to gross income ratio on an aggregate basis, and may, but is not required to, include loan modifications beyond those meeting the minimum eligibility requirements under this article.

(2) For loan modification programs that do not achieve a 38% or lower ratio, on an aggregate basis, a servicer shall be able to establish other borrower characteristics that support a borrower's ability to repay the loan. These characteristics may include, but are not limited to, assets, a high income, low consumer debt, or any other borrower characteristics that support a borrower's ability to repay the loan, using customary underwriting criteria or current industry standards. If a servicer's comprehensive loan modification program does not achieve a debt-to-income ratio of 38% or lower, on an aggregate basis, the servicer shall explain in the application the reason for the higher ratio.

(3) For purposes of calculating housing-related debt to gross income, housing-related debt

does not include junior liens.

(e) Other Features

(1) A comprehensive loan modification program shall include at least two of the following features:

(A) An interest rate reduction, as needed, for a fixed term of at least 5 years.

(B) An extension of amortization period for the loan term, to no more than 40 years from the original date of the loan.

(C) Deferral of some portion of the principal amount of the unpaid principal balance until maturity of the loan.

(D) Reduction of principal.

(E) Compliance with a federally mandated loan modification program.

(F) Any other factor the Commissioner determines is appropriate, as identified and described in the servicer's application and approved by the Commissioner. Some factors may include, but are not limited to, back-end debt-to-income ratios, elimination of certain delinquency-related charges, modifications for borrowers who are not delinquent, but where such delinquency is reasonably imminent, and other forms of modification that result in a reduction of monthly payments for borrowers.

(2) While a comprehensive loan modification program must include at least two of the features set forth in paragraph (1), each individual loan modification need not include two features.

(3) A servicer shall have criteria in place that define when a borrower qualifies for the potential concessions or modifications.

(f) Long-term Sustainability:

A loan modification shall be presumed to constitute a long-term sustainable modification if it includes at least one of the following characteristics:

(1) The modification provides a reduction in monthly payment for the borrower for at least 5 years;

(2) The modification provides the borrower with a housing-related debt to gross income ratio of 38% or less;

(3) After the modification, the borrower's back-end debt-to-income ratio (as defined in the Home Affordable Modification Program Guidelines issued by the Department of the Treasury on March 4, 2009) is equal to or less than 55%;

(4) The borrower is current under the terms of the modified loan at the end of a 3-month trial period; or

(5) The modification is pursuant to the Home Affordable Modification Program Guidelines, HOPE for Homeowners Program, or another federal program intended to reduce the rate of foreclosures.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

7. Section 2850.6 is adopted to read:

§ 2850.6. Other Requirements for Comprehensive Loan Modification Programs.

(a) If a loan modification consists solely of a repayment plan, a servicer must be able to validate that the borrower has a housing-related debt to gross income ratio of 38% or less, and that under customary underwriting analysis and criteria or current industry standards the servicer has reasonable grounds to support the ability of the borrower to repay the loan. For purposes of this subsection, a repayment plan means a plan or arrangement where loan amounts past due, including principal, interest, late fees or other penalties, are added to the principal amount due on a loan and re-aged so that the loan is no longer delinquent, and no other loan concessions as described in Civil Code Section 2923.53(a) are provided to a borrower.

(b) A servicer shall consider all eligible loans under this subchapter unless prohibited by the rules of the applicable pooling and servicing agreement or other investor servicing agreements.

(c) A servicer shall use reasonable efforts to remove any prohibitions and obtain waivers or approvals from all necessary parties, including but not limited to junior lien holders and investors.

(d) For any request to modify a loan made by a borrower and received by the mortgage loan servicer prior to the expiration of 3 months following the recording of a notice of default, a servicer shall act on the request within a reasonable time period, and shall have procedures and processes in place to ensure that delays in the process not caused by a borrower do not adversely impact a borrower in the modification or foreclosure process. For purposes of this subsection, a mortgage loan servicer that evaluates a loan modification request in accordance with the time periods recommended in the HOPE NOW Mortgage Servicing Guidelines dated June 9, 2008, and hereby incorporated by reference, shall be deemed to be acting on a loan modification request in a reasonable time. Every mortgage loan servicer shall have a process in place to provide a borrower an acknowledgement of the receipt of a loan modification request. Nothing herein is intended to prevent a mortgage loan servicer from accepting and processing a borrower loan modification request received after three months from the date the notice of default is recorded.

(e) If a borrower fails to participate in the modification process by providing documentation within a reasonable time or otherwise abandoning the borrower's loan modification request, a servicer may decline the request and pursue other remedies such as foreclosure sale. For purposes of this subsection, a borrower that provides documentation within 2 weeks of a request by a servicer shall be presumed to have provided documentation within a reasonable time. A servicer shall notify a borrower in writing of the time period to respond to a request for information and the potential consequence of failing to provide information in a reasonable time, prior to declining a loan modification request because of a borrower's undue delay.

(f) A comprehensive loan modification program may include other foreclosure alternatives for borrowers who do not qualify for a loan modification or who no longer wish to remain in the property, such as short sales or deeds-in-lieu of foreclosure.

(g) A servicer is not required to modify a loan more than once, regardless of whether the modification was entered into prior to the operative date of the California Foreclosure Prevention Act (Civil Code Section 2923.52 et seq.) or thereafter pursuant to a comprehensive loan modification program approved by the Commissioner, provided that the initial modification reduced the borrower's monthly payments.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

8. Section 2850.7 is adopted to read:

SUBARTICLE 2. APPLICATION

§ 2850.7. INITIAL APPLICATION.

An applicant shall be temporarily exempt from subdivision (a) of Civil Code Section 2923.52 upon the filing of the exemption application set forth in this rule, provided that the application is accepted by the Commissioner as substantially complete.

1. Where to File

(a) Applicants licensed by the Department of Corporations under either the California Finance Lenders Law or the California Residential Mortgage Lending Act, and any other entities servicing residential mortgage loans that are not described in subparagraphs (b) and (c), shall file their application with the Department of Corporations at the following address:

Foreclosure Exemptions - Department of Corporations

320 West 4th Street, Suite 750

Los Angeles, CA 90013-2344

Applications not filed by mail may be delivered to any of the Department of Corporations' locations.

Alternatively, applications may be submitted to the Department of Corporations through any electronic means that may be made available by the department at its Internet website (www.corp.ca.gov).

(b) Commercial or industrial banks, savings associations, or credit unions organized in this state shall file their application with the Department of Financial Institutions at the following address (for purposes of this regulation, the phrase "organized in this state" means institutions headquartered in this state):

Foreclosure Exemptions - Department of Financial Institutions

1810 - 13th Street

Sacramento, California 95811-7118

Applications may be submitted by electronic mail to foreclosures@dfi.ca.gov.

(c) Applicants licensed by the Department of Real Estate under the Real Estate Law shall file their application with the Department of Real Estate at the following address:

Foreclosure Exemptions - Department of Real Estate

P.O. Box 187007

Sacramento, CA 95818-7007

Applications may be submitted by electronic mail to foreclosures@dre.ca.gov.

The inadvertent filing of an application with the incorrect department will not constitute grounds for denial of the application.

2. When to File

An applicant may file an application at any time. An applicant will be temporarily exempt from subdivision (a) of Civil Code Section 2923.52 upon the receipt of the exemption application by the

appropriate Department as noted above. An application received before the operative date of Civil Code Section 2923.52 shall be deemed received upon the operative date of that section, for purposes of the temporary order under subdivision (b)(2) of Civil Code Section 2923.53.

3. Temporary Order

Upon the latter of the date of receipt of an application or the operative date of Civil Code Section 2923.52, the Department will immediately notify a servicer electronically of the issuance of a Temporary Order exempting the servicer from the requirements of subdivision (a) of Civil Code Section 2923.52. The Department will identify the servicer as having a Temporary Order on the Department's website, and mail a Temporary Order to the servicer.

4. Final Order

Within 30 days of the latter of the date of receipt of an application or the operative date of Civil Code Section 2923.52, the Department will notify the servicer of whether the servicer has a comprehensive loan modification program that meets the requirements of Civil Code Section 2923.53. Upon a finding that the loan modification program meets the requirements of that section, the Commissioner shall issue a Final Order, and shall immediately notify the servicer of the final order.

5. Denial of Application

If the Commissioner denies the exemption application, the Department shall immediately notify the servicer. The Temporary Order shall remain in effect for 30 days after the date of denial. A servicer may submit a revised application before or after the denial of an application. A revised application will not alter or delay the expiration of the Temporary Order. Upon the expiration of the Temporary Order, a servicer shall comply with subdivision (a) of Civil Code Section 2923.52.

6. Changes to Application

The Department will accept changes to an application while the application is under

consideration. However, the Temporary Order may not be extended.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

9. Section 2850.8 is adopted to read:

§ 2850.8. Changes to Program after Final Order.

(a) A servicer may not alter its comprehensive loan modification program after the servicer receives a Final Order from the Commissioner, unless the servicer informs the Commissioner of the change to be made to the program. Any alterations to the program that cause the program to fall out of compliance with the approved program shall require a new application for exemption from the Commissioner. Nothing herein shall prevent a servicer from adding additional features to the modification program where such features are designed to increase the eligible volume of loans to be modified, reduce the amounts of monthly payments to borrowers, or reduce the probability of redefault, provided that the Commissioner receives timely notice of such alteration. Such timely notice shall not be greater than sixty (60) days after the changes to the modification program are proposed or initiated.

(b) A change made by the federal government, or an agent thereof, to a federal program, including but not limited to the Home Affordable Modification Program, the Home Affordable Refinance Program, or the Hope for Homeowners Program, shall not constitute a change to a comprehensive loan modification program and shall not require a new application nor require notice to the Commissioner.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

10. Section 2850.9 is adopted to read:

SUBARTICLE 3. APPLICATION FORM

§2850.9. The exemption application shall be in the following form:

STATE OF CALIFORNIA
DEPARTMENTS OF
CORPORATIONS, FINANCIAL INSTITUTIONS,
AND REAL ESTATE

APPLICATION FOR ORDER OF EXEMPTION FROM
CIVIL CODE SECTION 2923.52(a)
CALIFORNIA FORECLOSURE PREVENTION ACT

The purpose of this application is to apply for an order of exemption from Section 2923.52 of the California Foreclosure Prevention Act (California Civil Code Section 2923.52 et seq.). The approval of this application by the Commissioner shall provide the applicant with an exemption from the additional 90-day delay period before a servicer may file the Notice of Sale when foreclosing on real property, as provided in Civil Code Section 2923.52.

Upon filing this application, the applicant will be issued a temporary order of exemption, effective from the latter of the date of receipt of the application or the operative date of Civil Code Section 2923.52. The temporary order of exemption remains in effect until a final order of exemption is issued or for thirty (30) days after the application is denied.

When completing the application, please note the following:

- The name of the applicant must be the applicant's legal name.

- The applicant's regulatory license number must be provided.
- If the applicant holds a license with more than one regulatory agency under the same legal name for the same entity, list the license numbers for each regulatory agency from which an order of exemption is requested.
- The applicant must provide the name, title, address, email address, and telephone number of the contact person to whom questions regarding the filing of this application should be directed.
- The application must be signed by the applicant if a sole proprietor, by a general partner if a partnership, or by an authorized officer if a corporation or other entity.

The applicant's loan modification program must meet the following requirements:

- The program is designed to keep borrowers in their homes when the anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.
- The program targets a ratio of the borrower's housing related debt to gross income of 38% or less, on an aggregate basis in the program.
- The program includes a combination of the following:
 1. An interest rate reduction, as needed, for at least five years.
 2. An extension of the amortization period for the loan term, to no more than forty years from the original date of the loan.
 3. A deferral of some portion of the unpaid principal balance until the maturity of the loan.
 4. A reduction of principal.
 5. Compliance with a federally mandated loan modification program.

6. Any other factor the Commissioner determines is appropriate, as identified and described in this application and approved by the Commissioner (see 10 CCR § 2923.5(e)(1)(F)).

- In determining a loan modification solution for the borrower, the program seeks to achieve long-term sustainability for the borrower.

The appropriate page and paragraph from the loan modification program must be referenced on the application to show the program's compliance with the above requirements and expectations.

NOTE: A servicer is not required to violate a contractual agreement for the investor-owned loans or provide a modification to a borrower who is not willing or able to pay under the modification.

In addition to other required documentation, an applicant must submit with this application the declaration that meets the disclosure requirements of Civil Code Section 2923.54 that the applicant will include, or instruct the trustee to include, in the Notice of Sale. The declarations submitted with the application must state whether the servicer has obtained an order of exemption from the Commissioner that is current and valid on the date the Notice of Sale is recorded, and whether the additional 90-day period is applicable.

The application shall be filed with the appropriate agencies as follows:

Department of Corporations

- Licensed residential mortgage lenders and servicers
- Licensed finance lenders and brokers servicing mortgage loans
- Any other entities servicing mortgage loans that are not required to file the application with the Department of Financial Institutions or the Department of Real Estate

Department of Financial Institutions

- Commercial and industrial banks
- Savings associations
- Credit unions

Organized in this state servicing mortgage loans (for purposes of this regulation, the phrase “organized in this state” means institutions headquartered in this state)

Department of Real Estate

- Licensed real estate brokers servicing mortgage loans

An application will not be rejected by a department based upon an applicant's inadvertent failure to file with the designated department.

APPLICATION FOR ORDER OF EXEMPTION UNDER
SECTION 2923.53 OF THE
CALIFORNIA FORECLOSURE PREVENTION ACT
(CIVIL CODE SECTION 2923.52 ET SEQ.)

1. Legal name of applicant:

Fictitious business name (FBN):

2. License numbers:

DOC Primary License Number: _____

DFI Primary License Number: _____

DRE Primary License Number: _____

Other entity servicing mortgage loans

Name of Primary Regulator: _____

License/Identification Number, if applicable: _____

(Specify every license held by applicant that this application applies to.)

☐ Check this box if an application has also been filed with another department.

3. Contact Person/Title: _____

4. Telephone Number: _____

5. Email Address: _____
(Confirmation of Temporary Order will be provided to this e-mail address.)

6. Mailing Address: _____

7. Date comprehensive loan modification program was implemented:

8. Link to applicant's website describing its loan modification program:

9. Are you a commercial or industrial bank, savings association or credit union that has adopted a comprehensive loan modification program in substantial conformance with the Home Affordable Modification Program Guidelines issued by the Department of Treasury on March 4, 2009?

Yes _____ No _____

Indicate any differences from the Home Affordable Modification Program:

If your answer is "Yes," please skip the remaining questions, provide only Exhibit 2, and complete the declaration section of this application. If your answer is "No," please continue to complete the remainder of this application.

10. Are you currently participating in a federally sponsored loan modification program, or other federal loan modification program?

Yes _____ No _____

If yes, please indicate the program below:

Home Affordable Modification Program

Home Affordable Refinance Program

Hope for Homeowners

Other. Please specify:

A. Have you entered into a contract or agreement with the federal agency responsible for the program?

Yes No

If your answer is "yes," please provide a copy of the agreement(s). If you have entered into a Servicer Participation Agreement with a financial agent of the United States for the Home Affordable Modification Program, skip the remaining questions, provide only Exhibit 2, and complete the declaration section of this application.

B. Does the federal loan modification program(s) you are participating in cover all types of residential mortgage loans you service? (i.e. Fannie Mae, Freddie Mac, FHA, VA, etc.)

Yes No

If no, please explain and include how modifications for the loans not covered by the federal program are performed.

The following exhibits must be submitted with this application:

Exhibit (1): A description of your Comprehensive Loan Modification Program(s). The program must, at a minimum, include the requirements of Civil Code Section 2923.53. Please respond to the following questions and reference below the page and/or paragraph numbers with your submitted program. If you have more than one comprehensive loan modification program, please identify the program name and provide the requested information for each program:

Program 1 Name/Identity: _____

Program 2 Name/Identity: _____

Program 3 Name/Identity: _____

- Does the program contain a provision that the anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis? (Net present value (NPV) has same meaning as used in the federal Affordable Home Modification Program.)

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

- Does the program contain a provision that it targets a ratio of the borrower's housing related debt to gross income of 38% or less, on an aggregate basis in the program?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

- The program includes the consideration of a combination of the following features:

A. Does the program include an interest rate reduction, as needed, for at least five years?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

B. Does the program include an extension of the amortization period for the loan term, to no more than forty years from the original date of the loan?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

C. Does the program include a deferral of some portion of the unpaid principal balance until the maturity of the loan?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

D. Does the program include a reduction of principal?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

E. Does the program provide for loan modifications that comply with any federal loan modification program?

Program 1

Yes No

If yes, indicate the location of the provision. Page Paragraph

Program 2

Yes No

If yes, indicate the location of the provision. Page Paragraph

Program 3

Yes No

If yes, indicate the location of the provision. Page Paragraph

F. Does the program include other factors that have resulted in an increased number of loan modifications? Please provide a description and an explanation of how the other factors have reduced foreclosures on Exhibit 5.

- In determining a loan modification solution for the borrower, does the servicer seek to reduce monthly payments for at least 5 years?

Program 1

Yes No

If yes, indicate the location of the provision. Page Paragraph

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Exhibit (2): A NOTICE OF SALE form in compliance with Civil Code Section 2923.54, or a copy of the declaration, or forms of declarations, in compliance with Civil Code Section 2923.54 that the applicant will instruct its trustee to include in its Notice of Sale.

Exhibit (3). A copy of the notice that will be sent to borrowers informing them of the program.

Exhibit (4): Complete and submit the most recent 3 months of available data on the attached spreadsheet for mortgages secured by residential property located in California, which includes the following statistical information:

Servicing portfolio volume, including number of units and unpaid principal balance

Delinquency status of portfolio

Loss mitigation data including total number of modifications made

Loan modification features used

Housing related debt ratios (if available)

Subsequent defaults on loan modifications

Reasons for denial of loan modifications

Exhibit (5): Explanations for items included in the application.

(a) Provide the differences between applicant's NPV model and the Department of the Treasury's Net Present Value Model Parameters, and justification for the differences. For example, the use of alternative discount rates, the use of short sale rather than foreclosure, and other differences.

(b) If the program is unable to achieve a debt-to-income ratio of 38% or less, on an aggregate basis, provide an explanation of why the program is unable to achieve this target.

(c) Provide a description of other modification features to be considered by the Commissioner, if any.

NOTE: Exhibits 1, 4 and 5 are considered Confidential in nature and therefore will not be made available for public inspection on an individual basis.

Wherefore, applicant hereby requests that the Commissioner grant an order of exemption from Civil Code Section 2923.52, as provided in Section 2923.53 of the California Foreclosure Prevention Act (Civil Code Section 2923.52 et seq.) pursuant to the criteria set forth in that act and the rules adopted thereunder.

I declare under penalty of perjury that I have read the forgoing application, including all exhibits attached thereto, or filed therewith, and know the contents thereof, and that the statements are true and correct. I further declare that the applicant has implemented the comprehensive loan modification program set forth in this application, and that I have authority to make these

representations on behalf of the applicant.

Applicant

Signature of Declarant

Typed Name and Title of Declarant

Executed at: _____

(City, County, and State)

Date: _____

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

11. Section 2850.10 is adopted to read:

SUBARTICLE 4. DATA COLLECTION

§ Section 2850.10. Reports.

(a) A servicer that obtains a Final Order exempting the servicer from the provisions of subdivision (a) of Civil Code Section 2923.52 shall, upon request of the Commissioner, report loan modification data to the Commissioner on a quarterly basis, with the first report due no later than 90

days after a mortgage loan servicer obtains a final order from the Commissioner.

(b) The loan modification data shall be reported on the FORECLOSURE PREVENTION LOAN MODIFICATION DATA report form, dated May 21, 2009, hereby incorporated by reference.

(c) A mortgage loan servicer may seek a waiver from all or part of the reporting requirement of this section by requesting a hardship exemption from the Commissioner. A hardship exemption may be granted if a mortgage loan servicer is able to establish one or more of the following:

1. The servicer's volume of loans that are eligible for a comprehensive loan modification program will not be of any reasonable statistical value to the evaluation of the effectiveness of the California Foreclosure Prevention Act.
2. The servicer's infrastructure prevents it from collecting the data requested by the Commissioner, or the necessary changes are cost prohibitive. In granting a hardship exemption under this paragraph, the Commissioner may require a servicer to collect and report on information in the format that the servicer maintains the information or such other format agreed upon between the servicer and the Commissioner.

(d) The Commissioner may accept a report required or requested under, or pursuant to, a federal loan modification program, in lieu of the report in subsection (b).

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE FINDING OF EMERGENCY - READOPTION

Pursuant to Government Code Section 11346.1(h), the California Real Estate Commissioner ("Commissioner") hereby amends Title 10, Chapter 6, of the California Code of Regulations by readopting Article 16.5, entitled, "California Foreclosure Prevention Act." These emergency regulations clarify the application of Sections 2923.52 and 2923.53 of the Civil Code under the California Foreclosure Prevention Act ("CFPA", Civil Code Sec. 2923.52 et seq.), as enacted by ABX2 7 (Lieu, Ch. 5, Stats. 2009) and SBX2 7 (Corbett, Ch. 4, Stats. 2009) during the second extraordinary legislative session.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

On February 20, 2009, Governor Schwarzenegger signed into law the CFPA to assist in slowing the ongoing foreclosure crisis in California. The CFPA provides specified borrowers an additional 90 days in the home foreclosure process, unless the mortgage loan servicer responsible for servicing the borrower's loan establishes that it has implemented a comprehensive loan modification program, as described in Civil Code Section 2923.53, and the servicer obtains an order, as specified, from the Real Estate Commissioner, or Commissioner of Corporations, or Commissioner of Financial Institutions. The order from the Commissioner of Real Estate, Corporations, or Financial Institutions exempts a mortgage loan servicer from the requirement in Civil Code Section 2923.52(a) that a borrower be provided an additional 90 days in the home foreclosure process. The purpose of the CFPA is to encourage mortgage loan servicers to implement comprehensive loan modification programs to assist homeowners in paying their mortgage obligations and retaining their homes.

Civil Code Section 2923.53(d) requires the Commissioners of Real Estate, Corporations, and Financial Institutions to adopt emergency regulations to clarify the application of Civil Code Sections 2923.52 and 2923.53. Accordingly, these rules clarify these sections as follows.

CFPA

The CFPA requires a trustee to provide certain borrowers an additional 90 days in the foreclosure process, as specified, unless the residential mortgage servicer has obtained an order from the Commissioner of Real Estate, Corporations, or Financial Institutions exempting it from this requirement. A servicer may obtain an order by establishing and implementing a comprehensive loan modification program, as set forth in the CFPA, and submitting an application to appropriate Commissioner documenting the program.

These emergency regulations set forth the requirements for a comprehensive loan modification program, the process to apply for an order of exemption, the application for an order of exemption, and the reporting of data.

Federal Home Affordable Modification Program

The regulations provide that a loan modification program in compliance with the federal Home Affordable Modification Program ("HAMP") constitutes a comprehensive loan modification program under the CFPA. On March 4, 2009, the Obama Administration released U.S. Department of the Treasury guidelines to allow servicers to begin

immediately modifying eligible loans under the HAMP, a program designed to encourage loan modifications, similar to CFPB. The guidelines define a waterfall process of modifying a home loan in order to achieve a debt to income ratio of 31% by first lowering the interest rate to as low as 2%, next extending the term of the loan to as much as 40 years, and finally forbearing principal on the loan until the maturity date of the loan. The features of the federal program are at least as inclusive as the features of the CFPB, and therefore these rules provide that compliance with HAMP meets the requirement for enacting a comprehensive loan modification program. Because this federal program requires participating servicers to modify the loans of all eligible borrowers, a servicer would not need any additional state program to obtain an order of exemption from the appropriate Commissioner and the rules provide that no other requirements are applicable to servicers who have implemented HAMP.

Other Federal Programs

The rules provide that loans refinanced or modified under other federal programs, such as the Hope for Homeowners program or the Home Affordable Refinance Program, meet the requirements of the state comprehensive loan modification program for those particular loans. If a servicer has additional borrowers and loans that meet the eligibility requirements for the state program, the servicer must have implemented a program consistent with the state requirements for the remaining loans, to obtain the order of exemption.

Eligibility

The rules require a comprehensive loan modification program to be made available to all borrowers and loans meeting specified minimum requirements. A servicer may have a broader program, but not have a more restrictive program, to obtain the order of exemption.

The minimum eligibility requirements include the following:

- The borrower requesting the modification occupies the property, is in default on the loan, is not in a bankruptcy proceeding, can document income, and has not surrendered the property.
- The loan was made from 2003 through 2007, is the first lien on the property, and is secured by property in California.

Availability

The rules require servicers to alert borrowers to the existence of the program during the contact required under last year's SB 1137 (Perata, Ch. 69, Stats. 2008), which among other things requires a lender to reach out to a borrower at least 30 days before filing a notice of default on a property. Servicers are required to allow participation in the servicer's comprehensive loan modification program for any eligible borrower who contacts the servicer requesting assistance.

Minimum Program Requirements

The rules set forth minimum program requirements that generally reflect and clarify the requirements of the CFPB.

a. Anticipated Recovery (NPV) Test

The rules provide that a servicer may use the NPV parameters in the HAMP. If a servicer does not use these parameters, the servicer must specify the parameters and assumptions in its NPV test, and explain in its application why the assumptions are reasonable. A servicer must offer a loan modification to any borrower where the NPV of modifying the loan is greater than the NPV of foreclosure.

b. Debt to Income Ratio

The rules provide that a servicer's loan modification plan must target an aggregate 38% debt-to-income ratio. If a servicer's plan fails to achieve a 38% or lower debt-to-income ratio, the servicer must provide in its application the reasons the plan is unable to achieve this ratio.

c. Other Features

The rules set forth additional features for a modification program as set forth in the CFPB: interest rate reductions, reduction in principal, extension of the amortization period, and other factors set forth in the application and approved by the Commissioner. Consistent with the statute, the rules require that a plan include at least two of the features, but clarifies that a loan modification does not need to include more than a single feature.

d. Sustainability

The CFPB requires that a servicer seek to achieve long term sustainability for a borrower. The rules include a list of characteristics that demonstrate long-term sustainability, including a reduction in monthly payment, a 38% or lower debt to income ratio, a back-end debt to income ratio of less than 55%, and a current loan 3 months after modification.

e. Other Requirements

The rules include other requirements intended to further delineate the necessary requirements for a comprehensive loan modification program, including the following:

- That a repayment plan, without more, will not constitute a loan modification unless the borrower achieves a 38% or less debt to income ratio, and the servicer has verified the borrower's ability to repay the loan;
- That a servicer consider all eligible loans for inclusion unless prohibited by the rules of the applicable pooling and servicing agreement or other investor servicing agreements;
- That a servicer use reasonable efforts to remove any prohibitions and obtain waivers or approvals from all necessary parties, including but not limited to junior lien holders and investors; and
- That procedures be implemented to permit a servicer to act on applications timely, and not prejudice a borrower by delay.

Application

The rules set forth instructions on filing an application, receiving a temporary order, and receiving a final order of exemption. The rules further include the application.

Data

In accordance with the CFPA, the rules set forth loan modification data to be submitted to the appropriate Commissioner on a quarterly basis, upon request. The data to be collected includes information on the volume of foreclosures, modifications, modifications by type, and re-defaults, and information on the reasons for denying modifications. The rules further permit the Commissioners to grant hardship exemptions, as specified.

Public Participation

On April 21, 2009, the Departments of Real Estate, Corporations, and Financial Institutions released a draft of the rules, application, and reporting requirements to interested parties in accordance with Government Code Sections 11346(b) and 11346.45. The comments from interested parties were evaluated, and changes were made to the draft rules to incorporate changes, where appropriate.

Timing

The CFPA was enacted as part of the second extraordinary legislation session, was signed on February 20, 2009, and became effective May 21, 2009 (91 days after the session is adjourned, or 91 days after February 19, 2009). The CFPA requires emergency regulations to be adopted 10 days after the effective date of the CFPA, and provides that the act is operative 14 days after this issuance of regulations. As a result, the emergency regulations were filed with the Secretary of State on June 1, 2009 (see Government Code Section 6800), thereby making the law operative on June 15, 2009. The Commissioner seeks to readopt the emergency regulations under Government Code Section 11346.1(h).

AUTHORITY

Sections 2923.52 and 2923.53, Civil Code.

REFERENCE

Sections 2923.52 and 2923.53, Civil Code.

FINDING OF EMERGENCY

The California Real Estate Commissioner hereby finds that the readoption of the emergency regulations is necessary for the immediate preservation of the public peace, health and safety, or general welfare for the reasons set forth in Section 2 of ABX2 7 and SBX2 7:

(a) California is facing an unprecedented threat to its state and local economies due to skyrocketing residential property foreclosure rates in California. Those high foreclosure rates have adversely affected property values in California, and will have even greater adverse consequences as foreclosure rates continue to rise.

(b) It is essential to the economic health of California for the state to ameliorate the deleterious effects that will result from the continued high rate of foreclosure of residential properties by modifying the foreclosure process to provide additional time for borrowers to work out loan modifications while providing an exemption for mortgage loan servicers that have implemented a comprehensive loan modification program. This change in accessing the state's foreclosure

process is essential to ensure that the process does not exacerbate the current crisis by adding more foreclosures to the glut of foreclosed properties already on the market if the foreclosure may be avoided through a loan modification. Those additional foreclosures could further destabilize the housing market with significant, corresponding deleterious effects on the state and local economies.

The Department of Real Estate did not have sufficient time to enact regulations through the rulemaking process in order to have rules in place upon the operative date of ABX2 7 and SBX2 7. Further, Section 2923.53(d) of the CFPA directs the Commissioner to adopt emergency rules to clarify the act. Consequently, the Commissioner adopted emergency regulations. The readoption of the emergency regulations is necessary to allow additional time to complete the rulemaking process, in light of reduced resources caused by the budget crisis, and competing demands on limited resources brought about by the housing and foreclosure crises. This finding of emergency is supported by the case of Schenley Affiliated Brands Corp. v. Kirby, 21 Cal. App. 3d 177 (1971), where the court deferred to the agency's determination that an impending deadline constituted an emergency under the Administrative Procedure Act.

LOCAL MANDATE

These regulations do not impose a mandate on local agencies or school districts.

COST OR SAVINGS TO STATE AGENCY

These regulations will not result in any cost or savings to any local agency or school district, nor any other nondiscretionary cost or savings on local agencies. These regulations will not result in any cost or savings in federal funding to the state. These regulations will not result in any cost or savings to any state agency; any costs on a state agency are attributable to the statutes mandating these regulations.

CONTACT PERSON

Inquiries concerning this action may be directed to Daniel E. Kehew, Real Estate Counsel, at (916) 227-0425. Written inquiries may be submitted to the Department of Real Estate, Legal Section, P.O. Box 187007, Sacramento, California, 95818-7007. Comments may also be sent via electronic mail at DRERegulations@dre.ca.gov or faxed to (916) 227-9458.

Dated: November 18, 2009
Sacramento, California



Daniel E. Kehew
Real Estate Counsel
Department of Real Estate